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EXAMINER
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NOVOSAD, JENNIFER ELEANORE

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 04/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



### **DETAILED ACTION**

This final Office action is in response to the amendment filed March 31, 2006 by which claims 1, 3, 4, 11, and 14 were amended, claims 2 and 12 were canceled, and claims 21 and 22 were added.

#### ***Drawings***

The drawings, filed on March 26, 2004, are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims.

*Therefore*, the first and seconds stand, as called for in claim 11, i.e., alone, only, without any other structure, must be shown or the feature(s) canceled from the claim(s). It is noted that since the claims recite "consisting of", that a figure showing only what is present in claim 11 must be submitted. It is further noted that Figure 2 shows the stands having a flanged portion which is not present in claim 11. No new matter should be entered.

*Further*, (a) the padding material, as in claims 6, 7, 16, and 17, and (b) the support member being telescopic, as in claims 10 and 20, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. *With respect to (a)*, it is noted that numeral 114 has been used to depict the padding material. *However*, the drawings, particularly, Figure 1A, do not show an additional element defining the padding.

The drawings, filed on March 26, 2004, are objected to under 37 CFR 1.84(h)(5) because Figure 1 show(s) modified forms of construction in the same view.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing

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should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

The use of the trademark Velcro (see page 8, line 6) has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1 and 11 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification does not contain proper support for the recitation "consisting of", as in line 1 of claims 1 and 11. *In particular*, the specification does not mention, discuss, etc., that

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the invention ("may") defines, i.e., only, just, with no other structure, etc., a base portion and a support portion, which is what meant by the transitional phrase "consisting of". Pursuant to MPEP 2111.03, the transitional phrase "consisting of" excludes any element, step, or ingredient not specified in the claim. In re Gray, 53 F.2d 520, 11 USPQ 255 (CCPA 1931); Ex parte Davis, 80 USPQ 448, 450 (Bd. App. 1948) ("consisting of" defined as "closing the claim to the inclusion of materials other than those recited except for impurities ordinarily associated therewith.").

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 3-10, 11, and 13- 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recitation "formed as a unitary member" in lines 3 and 4 of each of claims 1 and 11 renders the claims indefinite since this recitation appears to be contradictory to what the specification states, and thus the metes and bounds cannot be properly ascertained. *In particular*, the specification (see page 6, lines 14-15) states that the base portion and support portion are "formed as a unitary member", which is not what claims 1 and 11 recite, i.e., in the claims, it is unclear from the language whether each element is formed separately as a unitary member or whether once assembled the elements recited therein are formed together as a unitary member. *Thus*, claims 3 and 13 are rendered indefinite since the specification states (see also page 6, line 10) that the portions "snap fit" in one embodiment and are "formed as a unitary member" in another embodiment. *Accordingly*, it is unclear how the portions can be *both* a unitary member

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and snap fit, i.e., once the portions are a unitary member they *cannot* be "snap fit", whereas the portions *could* be snap fit to make the portions a unitary member (it is noted that applicant does not disclose this feature).

Pursuant to MPEP 2111.03, a claim, e.g., each of claims 4-7, 9, 10, 14-17, and 19-22, which depends from a claim, e.g., claims 1 and 11, which "consists of" the recited elements or steps *cannot* add an element or step. *Thus*, the elements of the flanged portion, bracket hole, padding material, top cap, and telescoping portion recited in claims 4-7, 9, 10, 14-17, and 19-22, are not permitted and thus the metes and bounds of these claims cannot be properly ascertained. *It is noted however, that the claims have been examined as though these claims are in proper format, pursuant to the use of the transitional phrase "consisting of".*

Claims 21 and 22 recites the limitation "the flange portion" in line 1. There is insufficient antecedent basis for this limitation in the claim. It is noted that claims 4 and 14 recited a "flanged" portion.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

*Insomuch as the claims are best understood (in view of the Section 112, 1<sup>st</sup> and 2<sup>nd</sup> paragraph rejections, advanced above), claims 1, 3-8, 10, 11, 13-18, and 20-22 are rejected*

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under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,085,329 (Crowell et al. '329).

*With respect to claim 1*, Crowell et al. '329 disclose a portable construction stand comprising a base portion (22 and 21) and a support member (32 and 31) whereby the base portion and support portion are formed as a unitary member, once assembled; the support member (32 and 31) extends upwardly from the base portion (22 and 21) and includes an angled contact surface wherein planar material can be positioned on the base portion and in contact with the contact surface thereby maintaining the material (11) in a stationary position; *with respect to claim 4 (and 14)*, the support portion (32) comprises a flanged portion (unnumbered - side legs of the U-shaped elements 31 and 32) that *with respect to claims 21 and 22*, is attached to the support portion opposite the base portion, i.e., upwards; *with respect to claim 5 (and 15)*, the support portion comprises a bracket hole (51); *with respect to claims 6 and 7 (16 and 17)*, the base portion comprises padding, i.e., non-skid, material (at 62) that is adhesively bonded thereto; *with respect to claim 8 (and 18)*, the support portion and base portion create an angle of greater than 90 degrees; *with respect to claim 10 (and 20)*, the support portion (31 and 32) comprises a telescoping support portion, i.e., "telescopic" is defined in Webster's Dictionary, 10<sup>th</sup> edition, as "to become forced together lengthwise with one part entering another as the result of collision", and thus, as seen in Figure 6, element 32 enters into element 31 and is therefore considered to be telescopic; and *with respect to claim 11*, Crowell et al. '329 disclose a portable construction stand system comprising a first (left side) and a second (right side) stand with each stand comprising a base portion (22 and 21) and a support member (32 and 31) whereby the base portion and support portion are formed as a unitary member, once assembled; the support member (32 and

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31) extends upwardly from the base portion (22 and 21) and includes an angled contact surface wherein planar material can be positioned on the base portion and in contact with the contact surface thereby maintaining the material (11) in a stationary position.

The claims differ from Crowell et al. '329 in requiring: (a) the stand (claim 1) or stands (claim 11) to "consist" of a base portion and a support portion; (b) the portions to snap fit (claims 3 and 13); and (c) the support portion comprises a padding material that is adhesively bonded to the contact surface (claims 6, 7, 16, and 17).

*With respect to (a)*, although Crowell et al. '329 show more elements, i.e., elements 18 and 19, than just a base portion and a support portion, as required by the "consisting of" language in claims 1 and 11, it would have been obvious to one of ordinary skill in the art at the time the invention was made (i.e., the examiner takes official notice) that Crowell et al. '329 could be used without elements 18 and 19, for ease in assembly.

*With respect to (b)*, although Crowell et al. '329 show use of bolts (47), it would have been an obvious design choice to one of ordinary skill in the art at the time the invention was made (i.e., the examiner takes official notice) to have utilized mating elements so that the portions could be snap fit, thereby increasing ease in assembly.

*With respect to (c)*, Crowell et al. '329 show the use of padding material (62) adhesively bonded on the base portion. *Thus*, it would have been obvious to one of ordinary skill in the art at the time the invention was made (i.e., the examiner takes official notice) to have provided such padding on the support portion, thereby lowering the risk of damage done to items placed on the stand.



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Claims 9 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crowell et al. '329 as applied to claims 1, 3-8, 10, 11, 13-18, and 20-22 above, and further in view of U.S. Patent No. 5,513,826 (Lebaron '826).

Crowell et al. '329 disclose the stand(s) advanced above.

The claims differ from Crowell et al. '329 in requiring the support portions(s) comprise a top cap.

Lebaron '826 teaches the use of a top cap (31) on a support portion.

*Thus*, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the stand(s) of Crowell et al. '329 with top caps, for increased aesthetic appeal.

### ***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection. The new grounds of rejection were necessitated by the amendment changing "comprising" to --consisting--, in claims 1 and 11.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

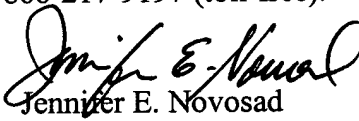
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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is 571-272-6832. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard E. Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jennifer E. Novosad  
Primary Examiner  
Art Unit 3634

April 17, 2006